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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 ROBERT McADAM,
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13 v. Plaintiff,
14 STATE NATIONAL INSURANCE
15 COMPANY, INC. and DOES 1
16 through 25, inclusive,
Defendants.

Case No. 12-cv-1333 BTM-MDD

**ORDER DENYING MOTION FOR
RELIEF FROM ORDERS NOS.
94 AND 105 PURSUANT TO
F.R.C.P. 60(b)(3) and (6).**

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18 On September 19, 2014 Plaintiff's counsel, Ms. Clark, filed a motion
19 requesting relief from this Court's Order No. 94, denying Plaintiff's Motion to
20 Strike Defendants' Noncompliant Motion for Summary Judgment or, in the
21 Alternative, Motion to Strike Excess Pages, and Order No. 105, granting
22 Defendants' Motion to Withdraw Admissions. Ms. Clark argued that Plaintiff
23 was denied from presenting full argument on the two motions underlying
24 Orders Nos. 94 and 105 because she contends she later discovered that
25 Defendants' counsel, Mr. Elstein, allegedly made certain misrepresentations
26 to her and this Court, through its law clerk, in association with a request for a
27 continuance. Ms. Clark believes these alleged misrepresentations call Mr.
28 Elstein's entire credibility into question. The Court heard oral argument on

1 the matter on October 28, 2014 and subsequently accepted sealed
2 evidentiary documents for *in camera* review.

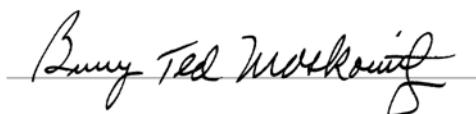
3 Having examined the sealed evidentiary documents, the Court finds
4 that Mr. Elstein was truthful when he communicated with Ms. Clark and this
5 Court's law clerk in relation to his request for a continuance.

6 Furthermore, as to Order 94, the Court continues to find that good
7 cause existed for granting Mr. Elstein relief to extend the deadline for filing
8 the motion once he missed it because Mr. Elstein was truthful in stating that
9 he was hospitalized between April 4, 2014 and April 8, 2014. Order 105 is
10 not vacated because the Court's assessment of Mr. Elstein's credibility was
11 not a basis for its decision in Order 105. During the April 23, 2014 hearing
12 on Defendants' Motion to Withdraw Admissions, the Court stated its basis for
13 granting Defendants' Motion to Withdraw Admissions under F.R.C.P. 36(b)
14 and the factors set forth in Conlon v. United States, 474 F.3d 616 (9th Cir.
15 2007).

16 For the reasons discussed above, Plaintiff's motion for relief from
17 Orders Nos. 94 and 105 and sanctions is **DENIED**.

18 **IT IS SO ORDERED.**

19 DATED: November 5, 2014

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21 BARRY TED MOSKOWITZ, Chief Judge
22 United States District Court
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